



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,545	02/12/2004	Kristian DiMatteo	10123/04501	5754

7590 11/01/2007
Patrick Fay, Esq.
FAY KAPLUN & MARCIN, LLP
Suite 702
150 Broadway
New York, NY 10038

EXAMINER

SHELL, LAURA C

ART UNIT	PAPER NUMBER
----------	--------------

3767

MAIL DATE	DELIVERY MODE
-----------	---------------

11/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/777,545

Applicant(s)

DIMATTEO ET AL.

Examiner

Laura C. Schell

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-28 is/are pending in the application.
- 4a) Of the above claim(s) 14, 15, 22 and 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-13, 16-21, 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn (US Patent No. 6,461,321) in view of Quinn (US Patent No. 7,048,722). Quinn '321 discloses the device substantially as claimed including a distal tip for a catheter (Fig. 5) comprising: first (59a) and second (59b) lumens extending there through, wherein in an operative configuration, the first and second lumens are coupled to first (27a) and second (27b) lumens of a dual lumen catheter (24); a partition (58) separating the first lumen from the second lumen (Fig. 5); a first opening (37) fluidly connected to the first lumen (59a) for inflow of fluid from a body lumen into which the distal tip is inserted in a normal mode of operation and for outflow of fluid thereto in a reverse mode of operation (col. 3, lines 7-11 and col. 7, lines 57-61); a second opening

Art Unit: 3767

(89) fluidly connected to the second lumen (59b), the second opening being disposed distally from the first opening and separated therefrom by a selected stagger distance for outflow of the fluid therefrom when the catheter is in the normal mode of operation and for inflow of fluid from the body lumen in a reverse mode of operation (col. 3, lines 7-11 and col. 7, lines 57-61); a contoured flow deflection element (93) directing, in the reverse mode of operation, outflow from the first opening away from the second opening (col. 7, lines 57-61 state that if the flow is reversed such that blood flows out through the first opening then the inflow of blood through the second opening does not mix with the outflow of blood because the two are staggered apart, and the flow of blood out from the first opening (37) would inherently hit the ramped portion of the bolus (20) and be deflected upward and away from the second opening); a contoured outlet portion (78) of the second opening reducing an outflow velocity therefrom in the normal mode of operation (col. 7, lines 53-56); and side walls extending between the first opening and the contoured flow deflection element (Fig. 5 discloses that the first opening actually opens at point (73), and Fig. 1 discloses that a side wall (labeled in Fig. 1 as either portion 37 or 98) that extends from the first opening (73) to the contoured flow deflection element (93). The portions of catheter walls that extend between these two points are walls that are found on the sides of the catheter).

Quinn '321, however, does not disclose that the side walls extend away from the partition on the same side as the first opening to create a channel between the first opening and the contoured flow deflection element. Quinn '722, however, discloses a dual lumen catheter (Fig. 32) with a portion that can be used as a distal tip (portion 126

Art Unit: 3767

that attaches to the dual lumen catheter can be used as a distal tip if tubing 110 is not connected to its end), and further discloses a partition (140) separating the first lumen from the second lumen. Quinn '722 also discloses side walls (Fig. 35 discloses that side walls extend upwards from the partition 140) and that these side walls are on the same side as the first opening to create a channel between the first opening and the contoured flow deflection element (136). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Quinn '321 with the side walls extending upwards from the partition, as taught by Quinn '722, in order to provide a tip that directs fluid towards the flow deflection element and prevents it from spilling radially to prevent unnecessary mixing of fluids.

In reference to claim 2, Quinn '321 further discloses that the first and second openings are disposed on opposite sides of the distal tip (Fig. 5 and also see col. 3, lines 41-47) thereof.

In reference to claim 3, Quinn '321 further discloses that the first and second openings have orifices (37 and 89) extending in planes angled with respect to a longitudinal axis (X) of the distal tip (as disclosed in Fig. 5).

In reference to claim 4, Quinn '321 also discloses that the contoured flow deflection element (57) is adapted to direct outflow from the second opening (89) away from the first opening (37) in the normal mode of operation (Fig. 5 shows that the fluid flow would be directed along lumen 56 and would be then be directed outwards and downwards in the opposite direction from the first opening).

In reference to claim 5, Quinn '321 also discloses that the distal tip is comprised of an atraumatic tip (col. 2, lines 65-66).

In reference to claim 6, Quinn '321 further discloses that the first opening includes a first ramp portion (area nearest 20 in Fig. 5) that inherently deflects outflow therefrom away from a longitudinal axis of the distal tip when in the reverse mode of operation (col. 7, lines 57-61).

In reference to claim 8, Quinn '321 further discloses that the second opening (89) includes a second ramp portion (78) deflecting outflow from the second opening away from a longitudinal axis (X) of the distal tip in the normal mode (Fig. 5).

In reference to claim 9, Quinn '321 also discloses that the second opening comprises an expanded section (Fig. 2, 71) increasing an exit plane cross sectional area of the second orifice (Fig. 5 also shows that the second orifice (89) expands upwards above the X-plane to create the expanded area).

In reference to claim 10, Quinn '321 also discloses that the first and second lumens have D-shaped cross sections (Fig. 7).

In reference to claim 11, Quinn '321 further discloses that the first ramp (near 20) is aligned with the first opening (37) and the second ramp (78) is aligned with the second opening (89) and there is an atraumatic distal tip (Fig. 2, 99).

In reference to claim 12, Quinn '321 further discloses that the maximum radial dimension of the contoured bolus (99) is less than a radius of a catheter to which the distal tip is to be coupled (col. 6, lines 60-65).

Claims 16-21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn (US Patent No. 6,461,321) in view of Quinn (US Patent No. 7,048,722). Quinn '321 discloses the device substantially as claimed including a flow control tip for a multi-lumen catheter comprising: an attachment portion (Fig. 5) adapted to fluidly connect to a distal portion of a catheter (24) (Fig. 5 discloses that the flow control tip (93) attaches to the distal end of the catheter (24) at the region disclosed as (34), also see col. 5, lines 49-51). Quinn further discloses a contoured bolus (93) defining at least a portion of an inlet (37) and an outlet (89) of the distal tip, the inlet and outlet being separated by a partition (58), so that, when coupled to a catheter, the inlet is coupled to a first one of the catheter lumens (59a) and the outlet is coupled to a second one of the catheter lumens (59b), and a flow deflector (78) directing fluids exiting the inlet in a first mode away from the outlet and side walls extending between the inlet and the bolus (Fig. 5 discloses that the first opening actually opens at point (73), and Fig. 1 discloses that a side wall (labeled in Fig. 1 as either portion 37 or 98) that extends from the first opening (73) to the contoured flow deflection element (93). The portions of catheter walls that extend between these two points are walls that are found on the sides of the catheter.) wherein the contoured bolus defines a specified stagger distance between the inlet and the outlet (Fig. 1).

Quinn '321, however, does not disclose that the side walls extend away from the partition on the same side as the first opening to create a channel between the first

Art Unit: 3767

opening and the contoured flow deflection element. Quinn '722, however, discloses a dual lumen catheter (Fig. 32) with a portion that can be used as a distal tip (portion 126 that attaches to the dual lumen catheter can be used as a distal tip if tubing 110 is not connected to its end), and further discloses a partition (140) separating the first lumen from the second lumen. Quinn '722 also discloses side walls (Fig. 35 discloses that side walls extend upwards from the partition 140) and that these side walls are on the same side as the first opening to create a channel between the first opening and the contoured flow deflection element (136). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Quinn '321 with the side walls extending upwards from the partition, as taught by Quinn '722, in order to provide a tip that directs fluid towards the flow deflection element and prevents it from spilling radially to prevent unnecessary mixing of fluids.

In reference to claim 17, Quinn '321 also discloses that the contoured bolus further comprises a second flow deflector (near 20) directing fluid exiting the outlet in a second mode away from the inlet (col. 7, lines 57-61).

In reference to claim 18, Quinn '321 also discloses that the inlet and the outlet are formed on opposite surfaces of the contoured bolus (Fig. 5, also see col. 3, lines 41-47).

In reference to claim 19, Quinn '321 further discloses that the flow deflector comprises a ramp (near 20) disposed adjacent an inlet opening (37).

In reference to claim 20, Quinn '321 also discloses that the contoured bolus defines an expanded section (Fig. 5 discloses that directly above element 91, the lumen

56 expands upwards so that it expands above the x-axis) which increases an exit plane cross-sectional area of the outlet.

In reference to claim 21, Quinn '321 further discloses that the size of the expanded section is selected to reduce an exit pressure (col. 7, lines 51-57).

In reference to claim 23, Quinn '321 also discloses that the attachment portion is adapted for attachment to the catheter by thermal bonding (col. 5, lines 51-55).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn (US Patent No. 6,461,321) in view of Quinn (US Patent No. 7,048,722) and further in view of Dasse et al. (US Patent No. 5,171,216). Quinn '321 in view of Quinn '722 discloses the device substantially as claimed, however, Quinn does not disclose expressly that the stagger distance between the openings is between 1 and 1.5 cm. Dasse, however, discloses a distal tip of a catheter with a stagger distance between the openings.(Fig. 3, 14 and 16) that can be anywhere in the range of 1-4 cm (see col. 5, lines 7-13). Therefore it would have been obvious to one of Ordinary skill in the art at the time of the invention to have modified Quinn in view of Quinn with the stagger distance as specified by Dasse in order to provide an optimal distance between the openings such that mixing of the blood does not occur, yet also to ensure that the distal tip of the catheter can still be maneuverable within a vascular system.

Response to Arguments

Art Unit: 3767

Applicant's arguments with respect to claims 1-13, 16-21 and 23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Schell whose telephone number is (571) 272-7881. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LCS

LCS

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

